

THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER J. HADNAGY, an individual; and SOCIAL-ENGINEER, LLC, a Pennsylvania limited liability company,

Plaintiff,

v.

JEFF MOSS, an individual; DEF CON COMMUNICATIONS, INC., a Washington corporation; and DOES 1-10; and ROE ENTITIES 1-10, inclusive,

Defendants.

No. 2:23-cv-01932-BAT

DEFENDANTS' MOTION TO SEAL

Noted for Consideration: March 28, 2025

LCR 5(g)(3)(A) CERTIFICATION

Defendants Def Con Communications, Inc. and Jeff Moss (collectively, “Defendants”) certify that, prior to filing, counsel for Defendants met and conferred with counsel for Plaintiffs Christopher Hadnagy and Social-Engineer, LLC’s (collectively, “Hadnagy”) in an effort to minimize any need to file documents under seal, minimize the amount of material filed under seal, and to explore redaction and other alternatives for filing under seal, as LCR 5(g)(3)(A) requires. The parties exchanged email correspondence between February 24, 2025, and March 7, 2025, regarding redactions to these documents. Pursuant to the parties’ Stipulated Protective Order (ECF 47), Defendants are redacting the following information from its Motion to Exclude Hadnagy’s Damages Expert Ben Thomas (“Daubert Motion”) filed concurrently, and the supporting exhibits to the Motion: (1) Social-Engineer’s annual revenues; (2) the multiplier that Thomas applied to Social-Engineer’s annual revenues to calculate Social-Engineer’s alleged lost business value; (3) specific line-item expenditures by Social-Engineer; (4) Hadnagy’s salary history; and (5) Social-Engineer’s allegedly lost business opportunities.

Defendants are only filing the Daubert Motion and Exhibits A, B, and C under seal to comply with LCR 5(g)(5)(A) and (B). Defendants are not taking a position on the propriety of these redactions or sealing.

MOTION TO SEAL

Pursuant to LCR 5(g)(3) and the parties’ Stipulated Protective Order (ECF 47), Defendants file this Motion to redact certain portions of the Daubert Motion and Exhibit A (the Expert Report), and to seal in its entirety Exhibit B (the testimony of Thomas) and Exhibit C (a spreadsheet created by Hadnagy) attached to the Declaration of Matt Mertens in support of the Daubert Motion. Hadnagy designated Exhibits A and C, and certain material relied on and referred to in the Daubert Motion and

1 the testimony of Ben Thomas in Exhibit B, as “CONFIDENTIAL” under the parties’
2 Stipulated Protective Order.¹

3 In accordance with LCR 5(g)(5)(A) and (B), Defendants are concurrently filing
4 a redacted version of the Daubert Motion and supporting exhibits publicly, and De-
5 fendants are filing an unredacted version of the Daubert Motion and supporting ex-
6 hibits under seal.²

7 **1. Legal Standard**

8 Courts have recognized a “general right to inspect and copy public records and
9 documents, including judicial records and documents.” *Kamakana v. City & Cnty. of*
10 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns,*
11 *Inc.*, 435 U.S. 589, 597 (1978)). Accordingly, when a district court considers a sealing
12 request, “a strong presumption in favor of access is the starting point.” *Id.* (cleaned
13 up).

14 A party seeking to seal records related to motions that are dispositive or oth-
15 erwise “more than tangentially related to the merits of a case,” must “meet the high
16 threshold of showing that ‘compelling reasons’ support secrecy.” *See Ctr. for Auto*
17 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1098–99, 1102 (9th Cir. 2016); *Kama-*
18 *kana*, 447 F.3d at 1180 (internal citation omitted). “[P]lenty of technically nondispos-
19 itive motions . . . are strongly correlative to the merits of a case.” *Cent. Freight Lines*,

21 ¹ Plaintiff intended to, but did not, designate certain portions of Exhibit B (Thomas’s
22 expert testimony) as confidential. Prior to filing, counsel for Defendants conferred
23 with counsel for Hadnagy and confirmed that Hadnagy inadvertently did not desig-
24 nate portions of Thomas’s testimony under the Stipulated Protective Order as confi-
25 dential. Defendants are accordingly treating the entirety of Exhibit B as confidential
26 pending Hadnagy’s designations of specific portions of Thomas’s testimony.

² Defendants have highlighted the under-seal versions of the Daubert Motion, the
Expert Report, and Hadnagy’s lost contracts spreadsheet to show the Court what was
redacted in the public filing. Defendants have highlighted the under-seal version of
Thomas’s testimony to show the Court the specific portions that Defendants cite in
the Daubert Motion.

1 *Inc. v. Amazon Fulfillment Servs.*, No. C17-0814JLR, 2019 WL 3501439, at *2 (W.D.
 2 Wash. Aug. 1, 2019) (applying “compelling reasons” standard in context of sealing
 3 documents for motion to exclude expert).

4 Under the compelling reasons standard, the party seeking to seal a judicial
 5 record bears the burden of showing that “compelling reasons supported by specific
 6 factual findings . . . outweigh the general history of access and the public policies
 7 favoring disclosure.” *Kamakana*, 447 F.3d at 1178–79 (internal citations omitted). A
 8 failure to meet that burden means that the record will be filed in public. *Id.* at 1182.
 9 If a court decides to seal a record, it must base its decision on a compelling reason
 10 and articulate the factual basis for its ruling. *Id.* at 1179.

11 Further, pursuant to LCR 5(g)(3)(B), the party who designates a document con-
 12 fidential must provide a “specific statement of the applicable legal standard and the
 13 reasons for keeping a document under seal, including an explanation of: (i) the legit-
 14 imate private or public interest that warrant the relief sought; (ii) the injury that will
 15 result if the relief sought is not granted; and (iii) why a less restrictive alternative to
 16 the relief sought is not sufficient.”

17 **2. Hadnagy must satisfy the “compelling reasons” standard.**

18 Defendants are filing the Daubert Motion and Exhibits A, B, and C *provision-*
 19 *ally* under seal to comply with LCR(5)(g)(5)(A) and (B). The burden now shifts to
 20 Hadnagy to submit a response in support of sealing in accordance with LCR
 21 5(g)(3)(B), LCR 5(g)(5)(B), and the Ninth Circuit authority cited above. Defendants
 22 file this Motion strictly pursuant to the Stipulated Protective Order. I certify that this
 23 Motion contains 874 words, in compliance with the Local Civil Rules.

1 DATED this 7th day of March 2025.

2 **PERKINS COIE LLP**

3 *David A. Perez*

4 David A. Perez, WSBA No. 43959

5 **PERKINS COIE LLP**

6 1201 Third Avenue, Suite 4900

7 Seattle, WA 98101-3099

8 Telephone: 206.359.8000

9 E-mail: DPerez@perkinscoie.com

10 Matthew J. Mertens

11 **PERKINS COIE LLP**

12 1120 N.W. Couch Street 10th Floor

13 Portland, OR 97209-4128

14 Telephone: 503.727.2000

15 Email: MMertens@perkinscoie.com

16 Lauren A. Trambley

17 **PERKINS COIE LLP**

18 505 Howard Street, Suite 1000

19 San Francisco, CA 94105-3204

20 Telephone: 415.344.7000

21 Email: LTrambley@perkinscoie.com

22 *Attorneys for Defendants Jeff Moss and*
23 *Def Con Communications, Inc.*